Supreme Court, U.S.
FILED
031718 JUN 25 2004

No. ___

IN THE

Supreme Court of the United States

THOMAS E. KNUTH,
Petitioner,

v.

SANDRA M. KNUTH,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the United States of America

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Macomb County Circuit Court err by taking jurisdiction? Did the Michigan Court of Appeals and the Michigan Supreme Court then err by overlooking proper procedure with regard to Tennessee jurisdiction? Did the Tennessee Court err by not taking jurisdiction and deciding the case despite the Michigan Circuit Court's opinion?

2. Did the Michigan Courts err in their opinion that residence is a matter of intent rather than a state of physical abode? If not, then did the Macomb County Circuit Court err in application of due process by denying the defendant's request for an evidentiary hearing while accepting competing affidavits as the sole basis for determining intent? Did the Michigan Court of Appeals err by accepting, prima facia, a summary of the competing affidavits without exploring evidence? Did the Michigan Supreme Court err by finding no question in need of review?

3. Did the Macomb County Circuit Court of Michigan err in nullifying the Soldiers and Sailors Civil Relief Act?

PARTIES TO PROCEEDING

Petitioner:

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Respondent:

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OPINIONS BELOW

The denial by the Michigan Supreme Court of the motion for reconsideration (App. A, p. 1a) and the order of the Michigan Supreme Court to deny the application for appeal (App. B, p. 2a). Appendix C (p. 3a-4a) includes Michigan Supreme Court notes based on oral arguments. The State of Michigan Court of Appeals per curiam judgment (App. D, p. 5a-8a) and the opinion and order of the State of Michigan Circuit Court for the County of Macomb (App. E, p. 9a-12a), order of the Fourth Circuit Court for Davidson County Tennessee (App. F, p. 13a).

JURISDICTION

The opinion and order of the Macomb County Circuit Court (App. E, p9a-12a) claiming jurisdiction was entered on 24 September 1998. The counter-filed case was heard in the

Fourth Circuit Court for Davidson County Tennessee on 7 August 1998 with the certificate of service for the resultant order claiming jurisdiction dated 13 August 1998 while stamped "entered" on 27 October 1998. (App. F, p. 13a). The subsequent jurisdictional quagmire is the subject of this case.

STATUTORY PROVISIONS INVOLVED

The Michigan Supreme Court (MCL 552.9) provides:

> Sec. 9. (1) **A judgment of divorce shall not be granted by a court of this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint**, and, except as otherwise provided in subsection (2),[1] the complainant or defendant **has resided in the county in which the complaint is filed for 10 days** immediately preceding the filing of the complaint.

MCL 552.9a provides: Divorce; **domicile of defendant**; service of process

> Sec. 9a. **No decree of divorce shall be granted in any case except when 1 of the following facts exists**:
>
> a. **The defendant is domiciled in this state** at the time the bill of complaint is filed. [OR]
>
> b. **The defendant shall have been domiciled in this state** when the cause for divorce alleged in the bill or petition arose. [OR]
>
> c. **The defendant shall** have been brought in by publication or shall have been personally served with process **in this state**, or shall have been personally served with a copy of the order for appearance and

[1] (2) [Exception to 10 day county residence requirement if defendant is foreign national, minor children involved, risk that minor children will be taken outside Untied States].

publication **within this state**, or elsewhere, or has voluntarily appeared in the action or proceeding. Whenever any such order shall be served **outside this state**, proof of such service shall be made by the affidavit of the person who shall serve the same, made before a notary public, and when such affidavit shall be made **outside this state** it shall have attached the certificate of the clerk of the court of record, certifying to the official character of the notary and the genuineness of his or her signature to the jurat of the affidavit.

MCL 552.9e provides: Divorce; **cause occurring out of state; residence**

Sec. 9e. Whenever the cause for divorce charged in the bill or petition **has occurred out of this state**, no decree of divorce shall be granted unless the complainant or defendant **shall have resided in this state 1 year immediately preceding the filing of the bill** of complaint for divorce. **Absence from this state for not to exceed 90 days shall not be construed as to interfere with the fulfillment of the 1-year residence requirement** provided in the case of **causes for divorce occurring without this state.**

MCL 552.9f provides: Divorce; taking of testimony; minor children; perpetuating testimony; **nonresident defendant, residence of plaintiff**

Sec. 9f. No proofs or testimony shall be taken in any case for divorce [for 60 days if no minor children; 6 months with minor children; hardship exception; perpetuation of testimony exception] . . . . **When the defendant in any case for divorce is not domiciled in this state at the time of commencing the suit or shall not have been domiciled herein at the time the cause for divorce arose,** before any decree of divorce shall be granted **the complainant must prove that the parties have actually lived and cohabited together as husband and wife within this state, or that the com-**

plainant has in good faith resided in this state for 1 year immediately preceding the filing of the bill of complaint for divorce.

The Uniform Child Custody Jurisdiction Act of 1970 and the Revised Judicature Act. MCL 600.653 provides that a Circuit Court of the State has jurisdiction to make a child custody determination but only if one of the conditions stated in the statute exists. The conditions are:

a. Michigan is the "home state" (MCL 600.652(e)) of the minor child or had been the "home state" within 6 months before the commencement of the proceeding.

b. It is in the best interest of the child as he and his parents have a significant connection with the State and there is available in the State substantial evidence concerning the child's present and future care, protection, training, and personal relationships

c. The child is physically present in Michigan, has been abandoned, or there is an emergency that requires a Michigan court to protect the child.

d. It appears that no other State would have jurisdiction.

The Soldiers and Sailors Civil Relief Act (50 USC App 501 et seq) was enacted to protect the civil rights of persons in the military service remote from the site of litigation.

STATEMENT OF THE CASE

This case questions the Michigan jurisdiction over the divorce and child custody proceedings between an Active Duty officer in the United States Army and his wife. The Plaintiff-wife filed a complaint for divorce in Macomb County Michigan when she and the couple's minor child were visiting her parents while the Defendant-husband was deployed for military duty. Upon his return, he counter-filed in the home state of Tennessee. The unique aspect of this case is that Michigan took subject matter and child custody

jurisdiction based on a definition of residency as her "intent to abide" in that state rather than on "actual physical presence" there. The husband argues that statutory law requires physical presence for at least 180 days prior to filing. Further, the Michigan Courts were satisfied that "intent" based on competing affidavits was sufficient to satisfy jurisdictional requirements. The husband argues that due process requires an evidentiary hearing with burden of proof on the Plaintiff-wife. The Defendant-father sought relief from Michigan's child custody determinations through the Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act while the Michigan Court opined that the presence of maternal relatives in Michigan constituted sufficient Significant Connection there. Since Michigan acted first in time, Tennessee, which initially took jurisdiction, elected to stay proceedings until Michigan relinquishes jurisdiction. The Defendant sought relief through the Soldiers and Sailors Civil Relief Act since his ability to litigate custody, visitation, and an equitable property settlement was prejudiced by his military duty-assignment that was 700 miles from the Michigan Court. The Supreme Court of Michigan heard oral arguments and noted that the Plaintiff-wife, as she moved from place to place with her husband, always considered herself a resident of Michigan—it saw no issue that required its review. The Petitioner seeks clarification of the law and denial of jurisdiction in Michigan.

REASONS FOR GRANTING THE PETITION

The Macomb County Circuit Court erred by taking subject matter jurisdiction in this divorce.

Divorce is purely statutory. The controlling statutory provisions are unassailable and could scarcely be written in a clearer fashion and the burden is on the Plaintiff to establish subject matter jurisdiction—jurisdiction cannot be conferred by waiver or consent, (*Smith v Smith*, 218 Mich. App. 727,

555 NW2d 2271 (1996) citing *Universal Am-Dan Ltd v. Attorney General,* 197 Mich App. 34, 494 NW2d 787 (1992)). The statutory residency and waiting period requirements of the Michigan Divorce Act admit of no other reading than that actual physical residence within the boundaries of the State of Michigan are mandatory. In *Stamadianos v. Stamadianos*, 425 Mich. 1 3845 NW2d 604 (1986), the Court **vacated** a judgment of divorce for lack of jurisdiction where admittedly neither party had physically lived in the **county** for the statutorily mandated ten days. The Court arrived at that conclusion by reviewing its long history of jurisprudence **requiring actual residence within the State for the statutorily mandated period of time.** If lifelong actual physical residents of Michigan as in *Stamadianos* cannot obtain a valid divorce because of the ten day county residency rule, than there is no way logical, legal, equitable, or any other way imaginable that the parties in this case can have their marriage dissolved by the Macomb Circuit Court either. (*Stamadianos, supra* and *Fowler v. Fowler,* 191 Mich. App. 318, 477 NW2d 112 (1991)).

By reference to all of the above emphasized language, the Legislature has mandated in the clearest terms imaginable not only that at least one party to a divorce must physically live within the physical boundaries of the State of Michigan for 180 days before filing suit, but also mandated that the plaintiff must physically live within the physical boundaries of the State of Michigan for 1 year before filing suit when the cause for divorce ether occurred or arose outside the physical borders of this State.

It is beyond even the most academic or esoteric debate that the Legislature intended anything other than that any person applying to a circuit court of this State for a divorce decree severing the bonds of matrimony MUST be a bona fide, actual, physical resident of the State of Michigan for a certain mandatory period of time. It is beyond any debate

imaginable that the plaintiff in this case did not meet the legislatively mandated jurisdictional requirements. There is no dispute on the operative facts between the parties.

There is no dispute between the parties in this divorce about where they cohabitated as husband and wife during the 180 days prior to the wife's filing for divorce in Macomb County Michigan. The couple does not dispute that they lived together with their minor child in their home at 46 Greenview, Nashville, Tennessee 37205, of which they were co-signatures on a mortgage contract. The wife admits that she moved all of her belongings to the residence, obtained a Tennessee driver's license, opened local bank accounts, and she was actively seeking employment in Nashville while the husband was stationed at Fort Campbell.

There is also no dispute that the Plaintiff-wife was living and working in Alexandria, Virginia when the couple met while he was living and going to medical school in Bethesda, Maryland. The couple agrees that, although the marriage ceremony occurred in Michigan, neither of them resided in Michigan during the 13 years after they were married. There is no dispute that the couple made trips back and forth to visit relatives in Michigan but this does not qualify to establish her residency in Michigan (*Bradfield v. Bradfield*, 154 Mich 115; 117 NW 588 (1908)) cited with approval in *Stamadianos, supra).*

Michigan's definition of "residence" is based entirely on Federal regulation (*Soto v. Director, Michigan Department of Social Services*, 73 Mich. App. 263, 251 NW2d 292, 297 (1977)). Residence in Michigan is defined as a place of abode accompanied with the intention to remain –the domicile and residence are synonymous terms in Michigan (*Hartzler v. Radeka*, 265 Mich 451, 251 NW 554 (1933) and *Reaume v. Silloway, Inc. v. Tetzloff*, 315 Mich. 95 23 NW2d 219 (1946)0). In divorce statue, the word "residence" means that place where one resides, an abode, dwelling or habi-

tation, especially a settled or permanent home or domicile and consists of the fact of abode and the intention of remaining in that abode (*Banfield v. Banfield*, 318 Mich 38, 27 NW2d 336, 338 (1947), citing *Wright v. Genessee Circuit Judge*, 117 Mich 244, 75 NW 465 (1898)). In Michigan, residence must be actual and not constructive—more than mere legal domicile is required (*Banfield, supra* at NW2d 336, 338). The last time the Michigan Supreme Court spoke directly on this issue was in *Coyouomjian v. Anspach*, 360 Mich 371 (1960), where the Court most clearly and simply confirmed its long standing precedent and jurisprudence, faithfully applying and following the Legislative mandates in this area, but carving out a very narrow exception for "involuntary absence" from the state. Otherwise, the Legislature has long seen fit to allow an absence from the state for 90 days or less without danger of losing Michigan residency.

Importantly, Federal law governs the state of residency for military members; a citizen of a state does not change his citizenship by military service unless he indicates intent to abandon the original domicile and adopt a new one *(Seegers v. Strzempek* 149 F. Supp. 35 (E.D. Mich. 1957)). For service members, the intent to change home of record must be written and processed through appropriate personnel services. This Federal law does not apply to dependents of members of the U.S. Armed Forces. The domicile of a married woman is that of her husband (*Seegers, supra)*—this rule arises out of the common-law rule related to the unity of the spouses. There is an exception to that rule where the unity is no longer a fact because of separate residence of the spouses under hostile circumstances showing evidentiary breach of that marital unity (*Seegers* at 149 F. Supp 35,36). If such a breach occurred in this case, it occurred on 16 May 1998, when the Plaintiff-wife moved from the Tennessee marital residence more than a month after the Complaint for Divorce and moved in temporarily with her mother in Macomb County Michigan.

Both the Circuit Court and the Michigan Court of Appeals erred in their opinion that residence is solely a matter of intent rather than a state of physical abode.

The only dispute in this case revolves around where the wife claims that she "intended" to reside during the period of time defined within statutory law as the requirement for determining jurisdiction. The Plaintiff-wife claims that her "intent" to reside in Michigan satisfies the jurisdictional conditions of MCL 552.9 that she resided in the State for 180 days and the County of Macomb for 10 days immediately preceding the filing of the Complaint. Even on the Complaint, however, as well as the Summons, the Verified Statement, and the Record of Divorce and Annulment, the Plaintiff-wife shows that her *residence* was, at the time of the filing, 46 Greenview, Nashville, Tennessee 37205, a fact that she dismisses as a temporary condition until she could enact a change of address. In fact, this Tennessee address had been her actual residence since July 1, 1997 until May 16, 1998[2], over a month **after the Complaint was filed,** when she left Tennessee to temporarily reside with her mother in East-pointe, Michigan.

Though intent is a key factor, other factors are to be considered in determining residency; they are presence, abode, property ownership, and other facts. (*Leader v Leader*, 73 Mich. App. 27[illegible] 251 NW2d 288 (1977). The

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[2] The Plaintiff-wife claims that she moved the child to Michigan in March 1998 but brought him back to Tennessee on 6 May 1998 only to try to work out an amicable solution to the divorce. She then unilaterally moved him again on 16 May 1998, never to return. The husband claims that the Michigan visit from March to 6 May was a mutually planned visit during his time of military deployment. There is, therefore, some dispute over the exact date of her move to Michigan but either way, the move is within a month of the filing of her Complaint for Divorce in Macomb County Michigan on 15 April 1998.

Plaintiff-wife cites *Leader, supra* to propose that the residence and domicile of the wife is not necessarily the same as those of the husband. The facts of *Leader*, however, are entirely different from those in this case. In *Leader*, the parties were residents of Michigan when they separated and filed a divorce action in Michigan. The husband obtained a job in Kentucky and, as an attempt to reconcile, the wife moved with him to Kentucky. The reconciliation failed, and after four months, the wife moved back to Michigan and proceeded with the divorce action. The husband challenged the jurisdiction claiming that the wife was not a resident of Michigan. The wife testified that she had no intention of establishing Kentucky as her residence unless the reconciliation was successful. The wife in *Leader* had an established abode in Michigan with intent to reside there barring a change in the marital relationship. The facts in the case at hand are instead analogous to those in the case of *Hoffman v. Hoffman* (155 Mich. 328; 118 NW 990 (1909)), which was cited and analyzed in *Leader, supra. Hoffman* stands for the proposition that the residence of the husband is the residence of the wife because the wife desires to make her home with the husband "indefinitely and permanently."

The Plaintiff-wife argues that she was a resident of Michigan when she married her husband and claims that she never intended to give up residency in the state where she was raised simply because of her husband's military employment—just as a service member maintains the home of record from which he/she entered military service even though the member is transferred from state to state or to other countries. He claims that she may have already given up residency in Michigan 3 years prior to their marriage by the fact that she was living and working in Alexandria, Virginia when they met.

Further, the splitting of physical abode and intention to abide should not be confused with the concept of "home of

record" which the military allows service members to maintain while simultaneously establishing residence within various legal jurisdictions over the course of a career. In this case, the husband's home of record for his military contract was Connecticut, where he was raised, but there is no dispute between the couple that neither of them ever resided in Connecticut—just as neither of them ever resided in Michigan during their marriage. It would be preposterous to contend that Connecticut should have subject matter jurisdiction in this case if the defendant was to proclaim his intent to move back to his hometown after completing military service, which is precisely the purpose of defining a "home of record" in the military contract—the military agrees to return service members back to a designated home of record. The same concept is not inherent within a marriage contract, even among military families, so it is equally preposterous to accept that Michigan should have subject matter jurisdiction in the divorce simply because the wife absconded with the minor child back to her parents home, claiming intent to live there after the fact.

Even if considering correctness of the legal interpretation, both courts erred in their application of due process by failing to place the burden of proving intent on the Plaintiff-wife; by quoting the wife's affidavit while overlooking the absence of substantial evidence required to address questions-of-fact raised by the husband's contradictory affidavit.

As proof of her intention to reside in Michigan, the Plaintiff-wife claims that she had a Michigan driver's license and Michigan voter registration while he points to the date on the Michigan driver's license showing that it was obtained after the filing. Further, he showed that she had a Tennessee driver's license at the time of her filing for divorce in Michigan and claims that she never voted in Michigan. She claims to have maintained membership in a Michigan health

club for 17 years while he claims that, while she may have joined the club in Michigan 17 years earlier, maintenance of membership to the national chain allowed her use of facilities in several of the states where they had resided over the years. Each argument raised in the Plaintiff wife's affidavit claiming intent to reside in Michigan is countered by a contradictory claim in an affidavit by the husband.

The fact that both members of the party lived, worked, paid taxes, and co-owned real property in various jurisdictions since 1984, over the course of the 13-year marriage, should be over-riding evidence of intention to reside together as man and wife. Almost a year prior to her filing in Michigan, the plaintiff agrees that she signed a mortgage contract and moved into a house in Nashville, Tennessee with her husband and minor child. There is strong evidence to support at least equal intent to reside at her "abode" in Tennessee for nearly a year prior to the filing for divorce in Michigan. On the other hand, there was no domicile in the State of Michigan prior to the Divorce Complaint. Moving in with her mother in Eastpointe, Michigan on May 16, 1998, a month after she filed her Complaint for Divorce does not satisfy the residency requirement of Michigan law. It is incongruent to believe that a wife can reside in the same house with her husband and minor child while simultaneously intending to reside in another state or, more precisely, that the law would support such a schizophrenic understanding of residency.

True, the Respondent may claim that she has the intention to remain in Michigan after the divorce is concluded. However, that intent to remain in the future is not dispositive; she is required to have established residency—a settled permanent home with the intention of remaining in that abode (*Banfield, supra)* at least 180 days prior to April 15, 1998, the date of the filing of the Complaint for Divorce. The Plaintiff-wife never had a permanent home in Michigan—constructive residence through living temporarily with her mother is not

enough—her permanent home was, up until at least May 16, 1998, in Nashville, Tennessee.

All the Circuit Court says about intent is that "the defendant herein has not offered documentary evidence to raise a question of fact regarding plaintiff's residency". But, the competing affidavits clearly do "raise a question of fact" concerning intent. Before asserting that it was "satisfied that the jurisdictional requirements of MCL 552.9 have been met," the Circuit Court should have held an evidentiary hearing. Instead, a specific request by the Defendant for an evidentiary hearing was denied.

In failing to find issues in need of review, the Michigan Supreme Court erred by failing to recognize dangerous precedence inherent in allowing statutory law regarding the definition of residency to be overridden by a concept as abstract and dubious as unproven intent.

As the Supreme Court recognized in *Stamadianos,* citing *Sona v. Iowa,* 419 U.S. 393, 95 S.Ct. 553, 42 L. Ed. 2d 532 (1975), the Michigan residency requirement is intended to be jurisdictional so as to prevent "forum shopping" by complainants who may live in states where divorces are more difficult to obtain than they are under the Michigan no-fault divorce law. Tennessee is one of those states in which a divorce is more difficult to obtain because fault must be proven in that State.

The increasingly aberrant decisions of the Michigan Court of Appeals since 1960 have now gone so far afield of the State's Supreme Court's precedent and the clear Legislative mandates of our statutes that "residency" for purposes of obtaining a divorce decree has been reduced to a mere state of mind rather than the mandated state of being. Michigan should have no interest in being a "haven state" for disgruntled, run away spouses. It's sister states are fully capable

of adjudicating domestic disputes and according valid relief to the warring spouses. Yet under the Court of Appeals cases, that is exactly what Michigan has become—the place to go if you have ever lived there at all or had a notion to do so, without any regard for the time-honored definition of residence as "a place of abode coupled with an intention to remain."

The Michigan Courts have gone too far to separate physical abode and intention to abide. All that is needed now is a purported intent --an abode is entirely irrelevant. This is inconsistent with the law. It is inconsistent with the concept of family integrity and especially inconsistent for the well-being of military families who typically live in multiple jurisdictions over the course of a career. In our highly mobile society, almost no family under these rules would be safe from unilateral removal of minor children and marital property across jurisdictional boundaries.

The Macomb County Circuit Court erred in taking jurisdiction of child custody determination. The Michigan Court of Appeals and the Michigan Supreme Court then erred by overlooking proper procedure under the Uniform Child Custody Jurisdiction Act with regard to Tennessee jurisdiction.

There is no dispute between the parties in the operative facts of this case that the minor child, Alexander Knuth, date of birth November 3, 1995, was born in Augusta, Georgia and lived continuously in Georgia and then in Nashville, Tennessee until the mother unilaterally moved him to the grandmother's home in Michigan on 16 May 1998. He never resided in Michigan. He had neither been abandoned nor was there any emergency that required a Michigan court to protect the child against mistreatment or abuse. There is no dispute between the parties that the minor child was removed from the marital home in Nashville, Tennessee by the Respondent,

without the husband's knowledge or consent, and moved to the State of Michigan where she filed a divorce action in Macomb County Michigan within a month of moving there and obtained Ex Parte Orders of Support and Custody.

The Michigan Court took such action with full knowledge that the wife and minor child resided in Tennessee as they listed such address on the Complaint. Tennessee, not Michigan, is the "home state" of the minor child.

The Plaintiff-wife argued that the Macomb County Circuit Court should exercise jurisdiction to make child custody determination pursuant to MCL 600.653(1)(b) by claiming that the presence of the grandmother, aunts, uncles, and cousins in Michigan constituted significant connection to the state. She argued, that although the 2 ½ year-old himself had never lived in Michigan, he never established a scholastic record in the State of Tennessee. At the same time, the Defendant-father argued that he had not yet established any significant relationship with maternal relatives either. The Defendant-father has no connection to Michigan. The child had a future in Tennessee; the ties between Tennessee and Michigan were not by any measure equal.

Next, the Plaintiff-mother argued, and the Circuit Court agreed, that the presence of maternal relatives in Michigan constituted substantial evidence concerning the child's present or future care, protection, training, and personal relationships. The Circuit Court refused to recognize that the Plaintiff-mother had moved in with her parents, a temporary abode, but had no permanent residence of her own for herself and the minor child. The plaintiff had no employment in Michigan or visible means of supporting the couple's minor child. On the other hand, the Tennessee home was available and the Defendant-father was employed as a physician in the Army, at Fort Campbell, near the minor child's home. Evidence as to the fitness of the parents as well as to their financial circumstances was available in Tennessee, not

Michigan. Michigan is arguably an inappropriate forum pursuant to MCL 600.657.

Tennessee is the "home state" by statutory definition within the Uniform Child Custody Jurisdiction Act as enacted by the State of Tennessee as Code Sections 36-6-201 to 36-6-225. In a Motion for Dismissal by Summary Disposition pursuant to MCR 2.116 (C)(4), dated July 7, 1998, the Michigan Court was made aware that the Chancery Court of Montgomery County Tennessee had assumed jurisdiction in Case No. 98-05-0154 on May 28, 1998. Despite this, the Opinion and Order of the Macomb County Circuit, dated 24 September 1998 states,

> "Defendant next contends the Court should decline to exercise its jurisdiction under the Uniform Child Custody and Jurisdiction Act, MCL 600.651 et seq; MSA 27A.651 et seq (UCCJA") as Tennessee is the home state of Alexander and it has already taken jurisdiction of the matter. Again, the plaintiff disagrees. **She contends this Court should exercise jurisdiction over Alexander as the Tennessee courts have not exercised jurisdiction over him." (App. E, p. 11a)**

In fact, the Fourth Circuit Court for Davidson County, Tennessee had already rendered its order claiming jurisdiction of this matter on 7 August 1998 even though the order was not officially "entered" until 27 October 1998. (App F, p. 13a).

Nonetheless, Macomb County Circuit court was satisfied that it had jurisdiction under the UCCJA, specifically MCL 600.653(1)(b); MSA 27A.653 because, "further, as plaintiff's complaint for divorce was filed prior to the defendant's complaint, the Court is satisfied Michigan has priority over custody matters. See MCL 600.656(1) MSA 27A.656." (App E, p12a). The Michigan Court alleged that it was the Tennessee Court's duty to contact it and no such contact had been made. The Tennessee Court, on the other hand, alleged that it had contacted the Michigan Court several times before

the September 14th order without response, and when contact was finally made, the Michigan Court was adamant about retaining jurisdiction over the custody matters.

In any event, it is not enough that the wife filed first in time in Michigan. Pursuant to MCL 600.656(3) the Michigan Circuit Court should have stayed proceedings and communicated with the Tennessee court to determine which is the appropriate forum to make a custody determination (*Braden v. Braden*, 217 Mich App 331; 551 NW2d 467 (1996)) under the Uniform Child Custody Jurisdiction Act. In fact, this communication did not take place until some time after Macomb County Circuit Court had already rendered its Order and Opinion. When the Macomb County Circuit Court would not relinquish jurisdiction, the Tennessee Court stayed proceedings. Thus, a jurisdictional stand-off was set: the Tennessee Court refused to act until the Michigan Court backed down and Michigan would not relinquish jurisdiction until Tennessee acted.[3] The actions of the Michigan Court in this regard are not substantial compliance with the UCCJA as codified in Tennessee or Michigan. The determination takes on added significance if the plaintiff has not satisfied the residency and waiting-period requirements of MCL 552.9, meaning that the Macomb County Circuit Court had no jurisdiction to adjudicate the divorce action.

The Tennessee Court remains reluctant to enter into a confrontational relationship with a sister state and elects to stay proceedings pending final disposition of all appeals in Michigan. The child custody jurisdiction acts are intended to

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[3] The jurisdiction quagmire was exacerbated by the fact that two counties in Tennessee were inadvertently involved by the attorneys—Davidson County where the martial home was and where the wife hired legal counsel and Montgomery County where the husband worked and sought legal counsel. An attempt to consolidate the cases in one county resulted in the Davidson court relinquishing jurisdiction to the Montgomery court but never to the Michigan court.

deter abductions and other unilateral removals of children undertaken to obtain custody awards. They are also intended to prevent intrastate confrontation as occurred here when the rules were not adhered to. The case remains open to this day in Montgomery County Tennessee Circuit Court.

Next the Michigan Circuit court opines that Michigan is not an inconvenient forum for the Defendant-father. The decisions of the Michigan Courts are simply wrong. The father had no connection to Michigan and the 700 miles between the home state and Michigan, the mother's preference for residence, severely limited paternal access to the minor child and vice versa. The Circuit Court decision clearly prioritizes the best interests of the mother over the best interests of the minor child who deserves equal access to both a mother and a father more so than equal access to a mother and maternal relatives.

> **No litigant can be forced to endure the orders and control of a court that has no power or control over him in the first place.**

The law is the law. Jurisdiction either exists or it does not. The passage of time does not negate the egregious wrong or make it less capable of redress. The agonizing situation that occurred in this case is clearly capable of being repeated again and again and again.

During oral argument in front of the Michigan Supreme Court, one of the justices queried whether this appeal was not somewhat of "a fool's errand", presumably because the Court is of the opinion that vacating this obviously void judgment would not afford Appellant any "real" relief. The "parade of horribles" from enforcing the statute at this late date would presumably include disturbing the child, disturbing the mother, a nightmare in trying to recover and redistribute property, possibly a re-filing of the suit in Macomb County

anyway, and basically the same resulting judgment possibly being issued.

With all due respect to this Honorable Court, none of these supposed or imagined or speculative consequences of enforcing the statutory law in this case and vacating this invalid, void judgment are in any way relevant. The consequences of undoing the grievous wrong that has been done here to Appellant are matters to be dealt with by these litigants, and should not be of any dispositive concern to this Court whatsoever.

If any Court believes that it is somehow "too late" to provide any "real relief" for this particular litigant, this issue must still be addressed under so-called "mootness" jurisprudence.

Even if the Michigan Supreme Court views the case as "moot", the issue of jurisdiction is absolutely capable of recurring but evading appellate review and should be addressed. Disposition based on "mootness" is not required when the underlying conduct is capable of repetition, yet evades review. *Mead v. Batchelor*, 435 Mich 480 (1990). Further, where a court's adverse judgment may have collateral legal consequences for a defendant, the issue is not necessarily moot. *Id.* at 487, (citation omitted).

The Petitioner respectfully urges this Honorable Court to consider "mootness" jurisprudence as it applies to this critical jurisdiction issue. See, e.g., *Detroit Firefighters Association v. City of Detroit*, 449 Mich 629 (1995) and numerous cases cited therein, including *Socialist Workers Party v. Secretary of State*, 412 Mich 571, 582 (1982).

Soldiers need to be secure in belief that their families, homes, and property remain free from destructive legal proceedings while they are deployed.

The Macomb County Circuit Court of Michigan erred by nullifying the Soldiers and Sailors Civil Relief Act (SSCRA).

The wife argued that the SSCRA was enacted to safeguard the rights of service persons in times of war and national crisis. The Michigan Supreme Court holds otherwise (*Haller v. Walczak*, 347 Mich 292; 79 NW2d 622 (1956)).

The SSCRA was enacted to protect the civil rights of persons in military service remote from the site of litigation, precisely as it should have in this case. As a commissioned officer in the United States Army, the defendant husband was not free to travel outside a limited radius of his duty station without specific permission from superior officers. His ability to meet with counsel, attend hearings, or participate in the defense of the divorce action or adequately contest a child custody determination while stationed 700 miles away was indeed materially prejudiced. The Macomb County Circuit Court was simply wrong in its opinion that Michigan was not an inconvenient forum for the husband. The court did not foster a level playing field as the wife, on the other hand, would not have encountered similar restrictions or regulations on her comings and goings in either jurisdiction.

Soldiers need to be secure in belief that their families, homes, and property remain free from legal proceedings that are designed to destroy or dissolve them while they are deployed, whether for a training assignment or for actual combat, or they are otherwise handicapped from full or equitable engagement in litigation because of military service.

In this case, the wife litigated restraining and custody orders while the husband was deployed. Since there was no urgency, the Macomb County Circuit Court should have

stayed proceedings under the SSCRA, especially when it learned that the Defendant-soldier sought to exercise rights in another jurisdiction.

CONCLUSION

Under the Michigan Court of Appeals published cases, residency is now only in the mind, not grounded in anything physical. The agonizing situation that occurred in this case is clearly capable of being repeated again and again and again.

This situation cannot be allowed to stand. Not only is the Petitioner, who comes before this Court imploring that justice finally be rendered, but the People of the State of Michigan, soldiers from any state throughout these United States, and indeed all parents in our highly mobile society who move from place to place during a marriage, need for this land's Highest Court to issue a definitive, bright line rule that leaves no doubt whatsoever that statutes enacted by our Legislature mean exactly what they say: only bona fide, actual Michigan residents who physically reside within its borders may apply to its circuit courts to dissolve troubled marriages, make critical decisions on the custodial best interest of involved children, and distribute property.

Practical considerations are not the issue. The most basic of our civil liberties is: whether a citizen may be compelled to submit to the power and authority of a court with no duly authorized power or authority over him in the first place.

Basic due process demands proper adjudication and plenary consideration by this Honorable Court.

Soldiers need assurance that spouses cannot unilaterally run off to foreign jurisdictions with their minor children and marital property while they are deployed in the service of their country.

Wherefore, Petitioner THOMAS E. KNUTH, moves this Honorable Court to consider the questions presented, and

upon such consideration, deny Michigan jurisdiction in this case, clarify jurisdictional law that will serve the best interests of minor children of military families by giving equitable rights to parents who are also soldiers.

Respectfully Submitted,

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APPENDIX A

MICHIGAN SUPREME COURT
Lansing, Michigan

[Filed February 27, 2004]

SC:123150
COA:231167
MacombCC:98-002111-DM

SANDRA, M. KNUTH,
Plaintiff-Appellee,

v.

THOMAS E. KNUTH,
Defendant-Appellant.

Maura D. Corrigan, *Chief Justice*.

Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor, Robert P. Young, Jr., Stephen J. Markman, *Justices*.

DENIED

On order of the Court, the motion for reconsideration of this Court's order of October 24, 2003 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R DAMS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

APPENDIX B

MICHIGAN SUPREME COURT
Lansing, Michigan

[Filed October 24, 2003]

SC:123150
COA:231167
MacombCC:98-002111-DM

SANDRA M. KNUTH,
Plaintiff-Appellee,

v.

THOMAS E. KNUTH,
Defendant-Appellant.

Maura D. Corrigan, *Chief Justice*.

Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor, Robert P. Young, Jr., Stephen J. Markman, *Justices*.

ORDER

On order of the Court, the parties having presented oral argument on the application for leave to appeal, the application is further considered, and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX C

MICHIGAN SUPREME COURT
OFFICE OF PUBLIC INFORMATION

FOR IMMEDIATE RELEASE

SUPREME COURT TO HEAR FIRST ORAL ARGUMENTS OF 2003-2004 TERM

LANSING, MI, October 13, 2003 - Sixteen cases, including a school funding dispute, will be heard by the Michigan Supreme Court this week in the first oral arguments of the Court's 2003-2004 term.

(Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys.)

KNUTH v. KNUTH (case no.123150)

Attorney: for plaintiff Sandra M. Knuth: Michael P. Kavanaugh/(586)776-1700.

Attorney for defendant Thomas E: Knuth: Marguerite Ann Hanes/(586) 493-9080.

Trial court /judge: Macomb County Circuit Court/Hon. Peter J. Maceroni.

At issue: The plaintiff-wife was living in Tennessee, and moved to Michigan with her son. Less than 180 days later, she filed for divorce and sought custody of the child. The defendant-husband filed a counter-complaint in Tennessee, but the Michigan court accepted jurisdiction over the divorce and the custody matter. Did the Michigan court have jurisdiction?

Background: Plaintiff Sandra M. Knuth left her marital home in Tennessee with her son and, while visiting her parents in Michigan, filed for divorce. The applicable Michigan statute provides that "A judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint. . . .". Defendant Thomas E. Knuth filed a counter action in Tennessee. The Michigan court held that it had jurisdiction, saying that Sandra Knuth had "resided" in Michigan for the required period of time. Noting that Thomas E. Knuth was in the Army and that the couple had moved frequently during their 13 years of marriage, the trial judge said that Sandra Knuth's contacts with Michigan were sufficient to establish her ongoing residency. Both the child and mother had significant connections to Michigan and the mother was the first to file, the trial judge indicated. In an unpublished per curiam decision, the Court of Appeals affirmed the trial court's ruling. Thomas Knuth appeals, contending that state law demands actual residence of the plaintiff in Michigan for 180 days before filing a divorce complaint. Sandra Knuth contends that she always considered herself a Michigan resident, and that, as she moved with her husband from one military assignment to another, her intent was always to return to Michigan, where her family resided. She notes that she registered to vote in Michigan 1992 and maintained her fitness club membership in Michigan throughout the years she lived elsewhere.

APPENDIX D

STATE OF MICHIGAN COURT OF APPEALS

Macomb Circuit Court LC No. 98-002111-DM

SANDRA M. KNUTH,
Plaintiff-Appellee,

v.

THOMAS E. KNUTH,
Defendant-Appellant.

UNPUBLISHED
December 3, 2002
No. 231167

Before: Murphy, P.J., and Markey and R. S. Gribbs[1]*, JJ.

PER CURIAM.

Defendant appeals from a judgment of divorce and the trial court's grant of physical custody of the parties' minor child to plaintiff. This case was remanded to this Court by the Michigan Supreme Court for reinstatement after defendant's appeal was dismissed for failure to file a brief. We affirm.

First, defendant argues that the trial court erred in determining that it had subject-matter jurisdiction over the divorce proceedings pursuant to MCL 552.9. We disagree. Whether a court has subject-matter jurisdiction is a question of law. *Smith v Smith*, 218 Mich App 727, 729; 555 NW2d 271 (1996). A trial court's determination regarding the existence of subject-matter jurisdiction is a question of law

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[1] Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

that this Court reviews de novo. *Trudeau v Martin*, 237 Mich App 253, 255; 602 NW2d 630 (1999).

When there is a lack of jurisdiction over the parties or the subject matter, no matter what action may have been taken by the trial court, (tie action is void. *Altman v Nelson*, 197 Mich App 467, 472-473; 495 NW2d 826 (1992). MCL 552.9 provides:

> A judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint and the complainant or defendant has resided in the county in which the complaint is filed for 10 days immediately preceding the filing of the complaint.

The residency and waiting period requirements of this statute are jurisdictional. *Smith, supra* at 730. Consequently, if these requirements are not met, the court cannot grant a judgment of divorce and must dismiss the case. *Id.*

When used in statutes conferring jurisdiction, residence is interpreted to mean legal residence or domicile. *Smith, supra* at 730. The issue of legal residency is principally one of intent. Id. Presence; abode, property ownership, and other facts are often considered, but intent is the key factor. *Id.* at 730-731. In *Curry v Jackson Circuit Court*, 151 Mich App 754, 757758; 391 NW2d 476 (1986), this Court discussed the legal definition of the term "reside" and concluded that "legal domicile" must be distinguished from mere residence or place of actual abode. A person's legal residence may not always be the place of his actual dwelling, and includes not only physical presence in a place, but also the accompanying intent of choosing that place as a permanent residence. *Id.* Here, plaintiff filed for divorce in 1998 after moving back to Michigan. The fact that the parties were buying a home in Tennessee, as they had done in other states where defendant

was stationed, is not dispositive of plaintiffs residence. Although both parties moved frequently during the marriage because of defendant's military commitment, plaintiff contended that she always intended to reside in Michigan, she frequently visited Michigan, she had a Michigan driver's license, she paid dues to the local branch of a fitness club, and she reregistered to vote in Michigan in 1992. On these facts, the trial court did not err in finding that plaintiff was a Michigan resident, *Smith, supra* at 730, and in finding subject matter jurisdiction under MCL 552.9.

Defendant also argues that the trial court erred when it determined that it had subject-matter jurisdiction over the custody dispute in this case. We do not agree. While the determination whether to decline jurisdiction under the Uniform Child Custody Jurisdiction Act, 28 USCS 1738(A)(2), is within the discretion of the trial court, *Brown v Brown*, 181 Mich App 61, 71; 448 NW2d 745 (1989), and will not, be reversed absent an abuse of that discretion, *Braden v Braden*, 217 Mich App 331, 338-339; 551 NW2d 467 (1996), the question whether a court has subject matter jurisdiction to hear a particular claim is a question of law which this Court reviews de novo. *Genesis Center PLC v Financial & Ins Services Comm'r*, 246 Mich App 531; 540; 633 NW2d 834 (2001).

In the instant case, defendant filed for divorce in Tennessee. The Tennessee court indicated its willingness to decline jurisdiction in the custody dispute. The Michigan trial court determined that it had jurisdiction over the custody matter pursuant to MCL 600.653(1)(b). The parties' minor child had significant connections with the state of Michigan because his mother had moved back to Michigan, several of his maternal relatives reside in Michigan, and there was substantial evidence available in Michigan regarding the minor child's present and future care. The trial court also noted that plaintiff's Michigan complaint for divorce was

filed prior to defendant's complaint for divorce in Tennessee. We find no error.

Finally, defendant argues that the trial court abused its discretion when it denied defendant an adjournment. There is no merit to this claim. The trial court was liberal in granting defendant's motions, adjourning this matter at least three times. The trial court gave defendant forty days to obtain substitute counsel. We find no abuse of discretion in the trial court's decision to deny yet another adjournment. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996).

We affirm.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Roman S. Gribbs

APPENDIX E

STATE OF MICHIGAN IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

File No. 98-211 DM

SANDRA M. KNUTH,

Plaintiff,

v.

THOMAS E. KNUTH,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for dismissal by summary disposition pursuant to MCR 2.116(C)(4).

Plaintiff filed her complaint for divorce on April 15, 1998. Plaintiff claims the parties were married in Eastpointe, Michigan on December 28, 1984 and a child, Alexander, was subsequently born to the parties on November 3, 1995. Plaintiff claims she is not pregnant and that, prior to the date of filing of her complaint, she has been a resident of this state for more than 180 days and a resident of Macomb County for more than 10 days.

In his motion, defendant argues plaintiff was actually a resident of the state of Tennessee at the time she filed her complaint for divorce and did not become a resident of Michigan until May 16, 1998. Defendant directs the Court to plaintiff's allegations as set forth in the complaint, the address which plaintiff listed on the summons, and the fact that plaintiff maintains a Tennessee Driver's License. Defendant contends plaintiff has no connections to Michigan other than the fact she moved here and currently lives with her mother in Eastpointe. Defendant accuses plaintiff of forum shopping.

Naturally, plaintiff disagrees. She asserts her residence is in Eastpointe Michigan and was so for at least 10 days prior to the time she filed her complaint. According to plaintiff, her only connection to Tennessee is the parties' marital residence. Plaintiff contends she and defendant have lived in several states since the date of their marriage because of his military obligations but she always claimed Michigan as her home state and always intended to return here. Finally, plaintiff explains she listed the Tennessee address on the summons for mailing purposes only while she was changing her address.

Whether a court has subject-matter jurisdiction is a question of law which may be raised at any time. *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996). The burden is on the plaintiff to establish jurisdiction. *Id.*, at 729.

This Court's jurisdiction in a divorce action is strictly statutory as provided for at MCL 552.6; MSA 25.86. Its jurisdiction is limited, however, to litigants who satisfy the residency requirements of MCL 552.9(1); MSA 25.89(1):

> A judgment of divorce shall not be granted by a court in this state in an action of divorce unless the complainant or defendant has resided in this state for 180 days, immediately preceding the filing of the complaint and; except as otherwise provided in subsection (2), the complainant or defendant has-resided in the County in which the complaint is filed for 10 days immediately preceding the filing of the complaint.

When used in statutes conferring jurisdiction, residence is interpreted to mean legal residence or domicile. The issue of legal residency is principally one of intent. Presence, abode, property ownership, and other facts are often considered, but intent is the key factor. *Smith, supra*, citing *Fowler v Fowler*, 191 Mich App.-318, 319; 477 NW2d 112 (1991).

Here, the parties were married in Michigan. Plaintiff's mother, father and other relatives reside here. Plaintiff maintained her voting privileges consistent with her intent to reside in Michigan. Further, plaintiff has a Michigan Driver's License and has paid dues for a health club membership in Eastpointe for the past 17 years. Plaintiff has also provided an affidavit which satisfies the Court plaintiff intended to retain Michigan as her residence although she moved several times while married to defendant. Additionally, the Court accepts plaintiff's statements in her affidavit to the effect she was a resident of Macomb County for at least 10 days prior to the date she filed her complaint and only returned to Tennessee in an effort to work things out with defendant. Unlike the defendant in *Smith, supra*, 218 Mich App at 727, defendant herein has not offered documentary evidence to raise a question of fact regarding plaintiff's residency. The Court is satisfied the jurisdictional requirements of MCL 552.9; MSA 25.89 have been met.

Defendant next contends the Court should decline to exercise its jurisdiction under the Uniform Child Custody and Jurisdiction Act, MCL 600.651 *et seq*; MSA 27A.651 *et seq* ("UCCJA") as Tennessee is the home state of Alexander and it has already taken jurisdiction of the matter. Again, plaintiff disagrees. She contends this Court should exercise jurisdiction over Alexander as the Tennessee courts have not exercised jurisdiction over him.

The Court is satisfied it has jurisdiction with regard to plaintiff's complaint under MCL 552.9; MSA 25.89. Consistent with this, the Court finds it has jurisdiction to determine custody, care and support issues regarding Alexander pursuant to MCL 552.15; MSA 25.95 and MCL 552.16; MSA 25.96. Finally, the Court is satisfied it has jurisdiction under the UCCJA, specifically MCL 600.653(1), (b); MSA 27A.653. Alexander has significant connections with this state as several of his maternal relatives reside here and there

is substantial evidence available in Michigan regarding his present and future care. Further, as plaintiff's complaint divorce was filed prior to defendant's complaint, the Court is satisfied Michigan has priority over any custody matters. See MCL 600.656(1); MSA 27A.656. Finally, the Court is not persuaded Michigan is an inconvenient forum. See MCL 600.657; MSA 27A.657.

Defendant finally contends the Court should stay proceedings since defendant is a member of the United States military. Defendant relies upon the Soldiers and Sailors Relief Act, 50 USC App § 501 *et seq*. Once again, plaintiff disagrees. She contends the Act is only applicable in times of war when a party would not be available to defend themselves in litigation. According to plaintiff, defendant has hired an attorney and is capable defending himself.

The Court has reviewed the Act. The Court is not persuaded defendant"s ability to conduct his defense is materially affected by his military service. See, for example, *Chlebek v Mikrut*, Mich 414; 58 NW2d 125 (1953). The Court declines to stay proceedings at this time. For the reasons set forth above, defendant"s motion dismissal by summary disposition pursuant to MCR 2.116(C)(4 is DENIED.

IT IS SO ORDERED.

DATED: SEPTEMBER 24, 1998

PETER J. MACERONI
Circuit Judge

cc: Joseph E. Mihelich
Richard P. Diehl

APPENDIX F

IN THE FOURTH CIRCUIT COURT
FOR DAVIDSON COUNTY, TENNESSEE

Docket No. 98D-2257

THOMAS EDWARD KNUTH,
Plaintiff,

vs.

SANDRA MARIE KNUTH
Defendant.

ORDER

This cause having come before the Court on the 7th day of August 1998, upon Plaintiff's *Motion to EstablishProper Venue in the State of Tennessee and to Render all Orders Outside this Jurisdiction Void,* after argument of counsel, it is the ORDER of the Court that this Court has jurisdiction over this matter.

This Court DENIES the Motion to render void orders issued by any other Court.

IT IS SO ORDERED.

MURIEL ROBINSON, JUDGE

Stamped Entered October 27, 1998

APPROVED FOR ENTRY BY:

Lew Conner
Grant Glassford
Attorneys for wife

(2)

No. 03-1718

IN THE

Supreme Court of the United States

THOMAS E. KNUTH,

Petitioner,

v.

SANDRA M. KNUTH,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the United States of America

PETITION FOR REHEARING

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San Antonio, TX 78258
(210) 497-7287

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Whether the Court should reconsider its decision of October 4, 2004 denying the Petition for a Writ of Certiorari with regards to the following question.

PETITION FOR A REHEARING

The petition for a writ of certiorari was denied on October 4, 2004. This petition for rehearing is respectfully submitted pursuant to the provisions of Rule 44 of the rules of the Supreme Court.

STATEMENT

As of this date, the Respondent continues to limit the Petitioner's access to the couple's minor child who was absconded to Macomb County Michigan, a jurisdiction which is not the couple's or the child's Home State but a jurisdiction which took control of divorce proceedings, including subject matter and child custody matters, over the objection of the Home State of Tennessee. The Petitioner has no desire and can no longer afford to litigate paternal rights in this foreign jurisdiction.

No litigant can be forced to endure the orders and control of a court that has no power or control over him in the first place.

The Michigan Court of Appeals and Michigan Supreme Court found no legal error when the Macomb County Circuit Court clearly re-interpreted statutory law by granting the Respondent residency within its jurisdiction based on her purported "intent" to reside there despite lack of physical abode in Michigan and despite material evidence of contrary intent.

If allowed to stand, the Michigan interpretation of statutory law regarding jurisdiction for divorce and custody settlements seriously undermines federal legislation, including the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act, by opening a loophole for disgruntled spouses to forum shop if they have resided in multiple jurisdictions over the course of a lifetime or duration of a marriage. Considering our highly mobile society, if we

value children's rights and equal parental access to children, such precedence is a social and legal issue of immense national concern. The interpretation of federal legislation by Michigan in this case is especially detrimental to military families who are guaranteed to relocate multiple times during a career.

Soldiers like me, who hold family values in highest regard and who serve our country to protect such values, need and deserve the attention of the highest court in our land to overcome injustice inherent in the unilateral removal of minor children across jurisdictional boundaries. I pray that the Supreme Court of the United States will re-consider hearing this case and then clarify the jurisdictional standing of military families—and perhaps of all mobile families—in our nation.

Respectfully submitted,

THOMAS E. KNUTH *
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San Antonio, TX 78258
(210) 497-7287

* Counsel of Record

CERTIFICATE OF COUNSEL

As Petitioner, Pro se', I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and it is restricted to the grounds specified in Rule 44 of the Supreme Court of the United States.

/s/ _____

Petitioner, Pro se